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ISSUES RELATED TO THE STATE §  
OF DISASTER FOR THE §  
FEBRUARY 2021 WINTER §  
WEATHER EVENT §

PUBLIC UTILITY COMMISSION  
OF TEXAS

**REPLY TO CERTAIN GENERATORS' EFFORTS TO IMPOSE A DOUBLE  
STANDARD AND MAGNIFY A WINDFALL, THROUGH THEIR OPPOSITION TO  
LT. GOVERNOR PATRICK'S AND IMM'S RECOMMENDATIONS, REGARDING  
THE FEBRUARY 2021 WINTER WEATHER EVENT**

Texpo Power LP d/b/a Texpo Energy ("Texpo")<sup>1</sup> submits these supplemental comments relating to the February 2021 Winter Weather Event and responds to comments filed by other participants in this docket. Texpo respectfully requests the Public Utility of Commission of Texas ("Commission" or "PUC") consider its proposals.

The Commission's February 15<sup>th</sup> and 16<sup>th</sup> Orders instantly raised energy prices to the high offer cap of \$9,000 per MWh during the February 2021 Winter Weather Event (the "Artificial HCAP Order"), thereby gifting one of the largest "windfalls" onto the state's "big three" power generators in the history of deregulation—to the detriment of just about everyone else. The timing requirements imposed by the ERCOT Protocols, described below, demonstrate why the Order resulted in an unexpected retroactively imposed windfall (to certain market participants) that must be mitigated by clarifying the Order and likewise ordering ERCOT to correct its implementation of the Order.

To manage daily exposure to ERCOT's real time balancing energy markets, market participants must enter bids and hedges into the day ahead market *by 10AM the morning BEFORE the day at issue*.<sup>2</sup> Accordingly, the Commission's issuance of the Artificial HCAP Order in the middle of an outage—in a relative vacuum and without advance notice so that market participants could adjust hedges based on the new market rules imposed by the Order—was

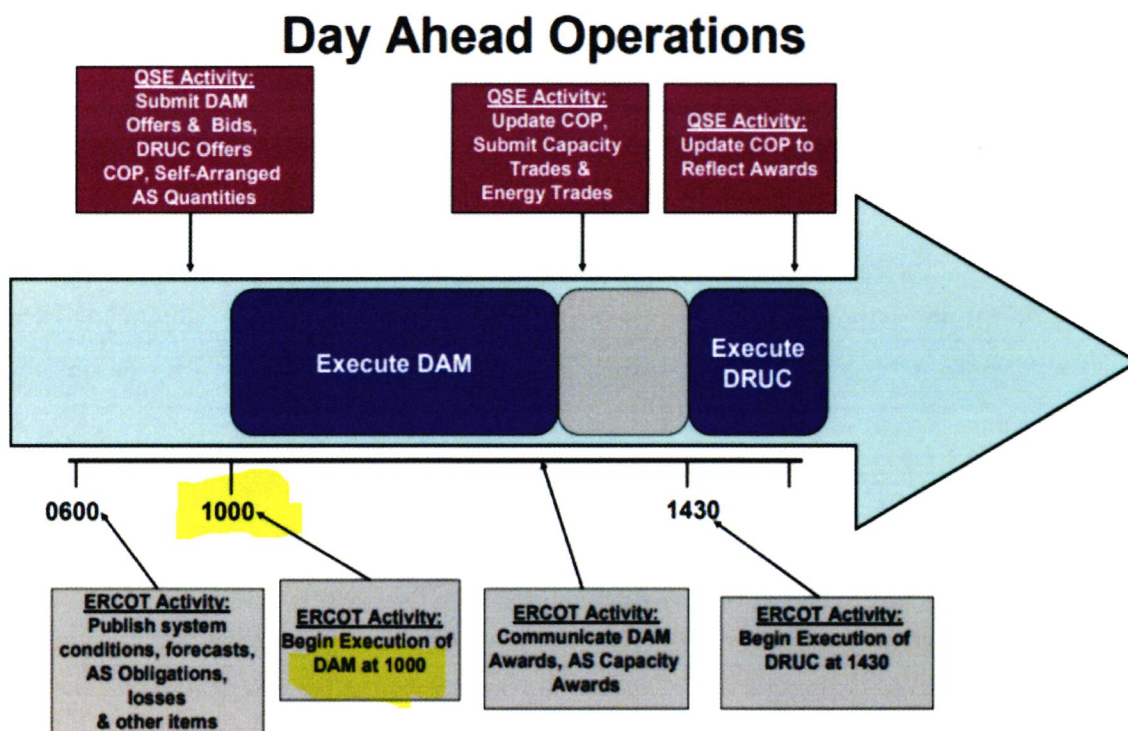
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<sup>1</sup> For sixteen years, Texpo has successfully operated in the Electric Reliability Council of Texas ("ERCOT") market as both a Retail Electric Provider ("REP") under Certificate No. 10126, a Qualified Scheduling Entity, and Load Serving Entity, registered directly with ERCOT.

<sup>2</sup> See ERCOT Nodal Protocols Sections 4.4.7.1, 4.4.7.2, 4.4.7.4, and Summary of Timing in Section 4.1.

effectively a prohibited *ex post facto* law. See the below timeline summary within ERCOT's Protocols, Section 4.1 (yellow highlighting added):

#### SECTION 4: DAY-AHEAD OPERATIONS



When the Commission passed its Order to immediately raise balancing energy prices to \$9000/MWh, market participants had already submitted their DAM bids and hedged their retail and wholesale energy and ancillary service positions for portions of the time covered by the Order.<sup>3</sup> Bids in the day ahead market bids were due BEFORE 10:00AM the morning prior – there was no way for market participants (including power generation companies) to go back and revise or resubmit their day ahead market schedules submitted on Feb 13 and 14. Accordingly, to avoid serving as an *ex post facto* law, the Commission would have needed to give the market *at least* 48 to 120 hours prior notice before the Order was to take effect. This did not happen. When the Order passed, it was literally impossible for market participants to retroactively go back in time

<sup>3</sup> Importantly, the Artificial HCAP Order also failed to work appropriately for generators, which had to submit their bids and quantities into the day ahead market the morning of the prior day. The proof of this principle speaks for itself given the Order failed to achieve its purpose: the Order failed to resolve the outages.

to adjust and mitigate the Order's consequences. The PUC's enactment was thus *ex post facto* and should be dealt with in a means other than allocating the effects of it onto market participants who had nothing to do with the underlying problem or outages in the first place.

The Protocol's market timing rules demonstrate why the Artificial HCAP Order must be clarified so that the impacts are mitigated. None of the entities who stand to benefit most from the high prices could have anticipated the windfall bestowed by the Order, thus, it will not disrupt the market to remedy the unintended consequences of the Order by ensuring it is implemented correctly. *Doing so might make such unexpected retroactively imposed windfall "a little less enormous" but it will not disrupt the market.*

In addition to Day Ahead Market deadlines under the ERCOT Nodal Protocols, described above, load serving entities and retail energy providers must hedge exposure to the day ahead and week ahead markets (including ancillary services such as RRS and Non-Spin Reserve) by refining forecasts to their load and then buying wholesale power and day ahead ancillary services in the bilateral markets several days and weeks **before** the days at issue. These decisions are based on the information and market rules then prevailing, so that bilateral counterparties, in turn, have time to submit and confirm commensurate schedules to ERCOT's day ahead and real time markets. To have any real effect, and to give market participants sufficient notice to plan and to make submissions in compliance with the ERCOT Protocols, the Commission should have never issued the Artificial HCAP Order in the middle of the outage. Even one month's prior notice, before its effective date, would have been insufficient. Yet, the complaints of the parties arguing against resettlement boil down to a claim that they must now be entitled to rely on such retroactively imposed windfalls. *Those claims are insincere. If the market participants (now opposing the IMM and who received windfalls) truly desired that market participants be able to firmly rely on the market rules and prices in the interest of planning and market stability, then those parties would likewise push for the reversal of the Artificial HCAP Order itself, given it severely disrupted all the bids and transactions done by market participants before the Order's retroactive enactment. In other words, the Artificial HCAP Order, itself, does exactly what those arguing against resettlement (and the IMM's recommendations) would have the Commission believe if the Order is allowed to stand.* Without proper notice, the Artificial HCAP Order disrupted the market and retroactively affected market participant decisions. The large generators arguing against the IMM's recommendations want to have their cake and eat it too.

It is likewise worth noting that the Commission's Order was not only a windfall for many of Texas's generators, it was also counterproductive and prolonged the outages. ***By tying (a) artificially imposed \$9,000 balancing energy prices to (b) a continuation of outages, why would a large generator take any real measures to quickly end the outages? Once the Order was enacted, the large generators (with big generation fleets) had every incentive to allow the outage to last as long as possible.*** Why would a generator work overtime to get power back online when they can let 25% of their fleet "trip" and allow the remaining 75% of the fleet to generate 100x normal revenues due to the power shortage that results. The increased revenues dwarf the reductions in units produced. While Texpo is not implying it has specific evidence that a generator unlawfully withheld power during the Weather Event, the market incentives are indisputable. The Commission and ERCOT should not encourage potential bad actors by paying them windfalls while expecting them not to engage in that activity in the future.

The IMM's recommendations must be implemented to restore clarity and order to the markets, notwithstanding the generators' efforts to make their unexpected huge windfalls a little less enormous. As it stands, ERCOT seeks to allocate billions of dollars of short payments (from entities such as Brazos, Entrust and Rayburn) onto solely retail electric providers (and their residential, small business, industrial and governmental electricity customers) on a *pro rata* basis, despite the other retail electricity providers, including Texpo, having nothing to do with the short payments of those market participants. Where does anyone believe this money will come from? One way or another, Texpo will protect its customers. However, one cannot deny that some of these increased costs imposed on retail electric providers generally will eventually make their way to the end users of electricity. Companies cannot perform magic; they must generate cash inflows equal to outflows or they go bankrupt. Moreover, once half (or most) of the retail energy providers are driven out of the market, competitive pressures on the large "gen-tailers" (Reliant and TXU) to keep prices low will decrease. These consolidated companies are believed to now control and hold well over half of Texas's retail energy market, with their market share growing quickly due to the new customers they are acquiring as POLRs.

We urge that policy makers not be fooled by the well-lawyered "gen-tailers:" contrary to what they may have the Commission believe, market prices will not benefit from a scenario where TXU and Reliant are the only two remaining retail energy providers, and that will be the most likely outcome if the Commission continues its present course. Substantially fewer REPs

competing with each other means higher prices for everyone in the long term. Same with customers being moved to the POLR (primarily TXU and Reliant) and paying higher POLR prices via any mass customer transfer process; again, more customers on the POLR means higher prices for those customers too. Yet this is preventable.

Why not allocate (as ERCOT says, “uplift”) all short payments related to the Weather Event to the market participant segment that failed during the outages. Generators do already have the ability to (a) weatherize their facilities; (b) weatherize (or cause to be weatherized) their local critical incoming gas lines for low winter temperatures, as generators do in the northeast at far lower temperatures than Texas; and (c) install back up generation to their own generation facilities for emergencies. Generators did already have notice that a power outage would likewise affect their own generation facilities and thus the need for backup. Indeed, some of the generators’ latest arguments, attempting to blame power outages for further power outages, are canard. If any party could procure back-up generation for a generation plant, it is a generation plant itself! During the storm, thousands of resilient Texan residential retail customers figured out how to install back-up power generators at their residences to support critical power needs when the power went out. Does anyone really believe some of the generators now claiming they could not have figured out how to do the same? Moreover, generators do already have the ability to construct dual fuel capable generation facilities as an additional back-up plan in case natural gas becomes scarce.

However, why would a generator do so when they can let 25% of their fleet “trip” and allow the remaining 75% of the fleet to generate 300x normal revenues due to the power shortage that results. Power going from \$30/MWh to \$9,000/MWh is akin to going to the grocery store, expecting to pay \$3.50 for a gallon of milk, and instead getting a bill for over \$1,000. Generators right now have the wrong incentives. All market participants who even arguably failed to weatherize plants or important infrastructure (or failed to install back up generation to support their own critical infrastructure) should, now and in the future, bear the brunt of such price spikes, also including bearing the brunt all short-pay uplifts and including the costs of the ancillary services in excess of the HCAP, along with remaining amounts to be born via state and federal disaster relief aid. Only then can the State be sure that this won’t happen again.

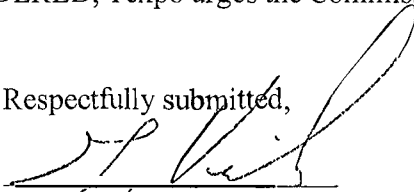
***Yet, in contrast to this principle, the Commission, in its February 15<sup>th</sup> and 16<sup>th</sup> actions, gave the generators the biggest ex post facto (retroactively imposed) windfall for physical withholding of power in the history of the deregulated markets. Such Order was a government-***

*imposed re-regulation of the markets during the Weather Event. Such Order halted, by government action, the forces of supply and demand. Such Order took from the people, and gave to “the big three” generators. It was effectively an (unwisely and retroactively imposed) government taking of immense proportions. The Commission and ERCOT contributed to the problem. It is not too late for the state government (and the Commission) to step in and do the right thing to mitigate the fall out. In terms of certain generators complaining about the resulting slight reductions to their enormous retroactively imposed windfalls, enough is enough.*

*[Texpo’s Signature Page is on the Next Page.]*

WHEREFORE, PREMISES CONSIDERED, Texpo urges the Commission to consider its comments and proposed actions.

Respectfully submitted,

  
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Greg Veisich, SVP Supply  
Texpo Power LP d/b/a Texpo Energy

March 11, 2021